Supreme Court, U.S.
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No. 01-630

IN THE

# SUPREME COURT OF THE UNITED STATES

JESUSA MORALES,

Petitioner,

v.

THE P.F. LABORATORIES, INC.,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS
FOR THE THIRD CIRCUIT

## RESPONDENT'S BRIEF IN OPPOSITION

CARMINE A. IANNACCONE
*Counsel of Record*
EPSTEIN BECKER & GREEN, P.C.
TWO GATEWAY CENTER, 12th FLOOR
NEWARK, NEW JERSEY 07102
(973) 642-1400

1200

## P. F. LABS – MORALES

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of United States, Respondent respectfully submits this Corporate Disclosure Statement.

Respondent The P.F. Laboratories, Inc. is a privately held corporation and is wholly owned by Pharmaceutical Research Associates, Inc. No publicly held company owns 10% or more of Respondent's stock.

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Respondent The P.F. Laboratories, Inc. ("PF Labs" or the "Company") requests that this Court deny the Petition for Certiorari ("Pet.") filed by Petitioner Jesusa Morales ("Morales"), seeking review of the decision of the United States Court of Appeals for the Third Circuit entered in this case on July 17, 2001.

## COUNTER-STATEMENT OF THE ISSUES PRESENTED

1. Should this Court grant certiorari in the absence of any demonstrable conflict between the decision of the court below and any other court of appeals where the Petitioner merely seeks to correct the Court of Appeals' purported errors of law and fact?

2. Does a private litigant's disagreement with the application of well-settled law to the particular factual allegations of her Amended Complaint warrant this Court's exercise of its certiorari jurisdiction?

## COUNTER-STATEMENT OF THE CASE

PF Labs manufactures and packages prescription and over-the-counter drugs.

Morales was employed by PF Labs from September 1969 until her termination in August 1998 for sabotage. At the time of her termination in August 1998, Morales held the position of Senior Chemist. Throughout her employment, Morales was a member of Local 825 of the International Chemical Workers Union (the "Union"). Following her termination, the Union grieved Morales' termination and an arbitration hearing was conducted after

which the arbitrator determined that PF Labs had just cause to discharge Morales.

On December 10, 1999, Morales originally filed a lawsuit in the United States District Court for the District of New Jersey alleging causes of action for: (1) defamation, (2) intentional infliction of emotional distress and (3) "alternative liability of P.F. Laboratories in respondeat superior." Civil Action No. 99-3969. By Order dated January 3, 2000, the District Court permitted Morales to voluntarily dismiss her lawsuit.

On January 6, 2000, Morales then filed the instant lawsuit against PF Labs, this time alleging that her Union had breached its duty of fair representation by failing to make certain arguments and offering certain "evidence" at arbitration. Civil Action No. 2:00-150. On January 14, 2000, Morales filed an Amended Complaint to correct her citation reference to §301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185.

PF Labs moved to dismiss Morales' Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Morales opposed PF Labs' motion with various arguments that amounted to nothing more than mere disagreements with the strategy at the arbitration employed by the Union and counsel she personally retained to assist the Union and present her case at the arbitration.

## REASONS FOR DENYING THE PETITION

This Court has long held that it "do[es] not grant a certiorari to review evidence and discuss particular facts." United States v. Johnston, 268 U.S. 220, 227 (1925). Put simply, the "principal purpose" for the Court's exercise

of its certiorari jurisdiction is to "resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." Braxton v. United States, 500 U.S. 344, 347 (1991). *See also*, Watt v. Alaska, 451 U.S. 259, 275 (1981) (Stevens, J., concurring) (The Court's "certiorari jurisdiction is designed to serve broader purposes than the correction of error in particular cases.").

On its face, the Petition sets forth no compelling reason for issuance of a Writ of Certiorari. The Petition asserts no conflict between the decision below and the decision of another United States Court of Appeals; nor does it enunciate in any way that the decision below has departed from the accepted and usual course of judicial proceedings. Instead, the Petition asks the Court to exercise its discretion because Petitioner believes that the Court below did not properly apply well-settled law to the particular facts presented in this case.

In essence, the Petitioner simply wants this Court to function as another Court of Appeals because she disagrees with the result below. Thus, the Petition should be denied.

## I. THE DECISION BELOW DOES NOT PRESENT A CONFLICT WITH OTHER JURISDICTIONS

Morales' claim that this Court should grant certiorari because the Court of Appeals departed from the Court's decision in Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976), is unfounded. The Court of Appeals' decision that prior precedent is inapplicable or

distinguishable from a particular case does not rise to the level of a conflict sufficient to grant certiorari.

Here, there was no reason for the Court of Appeals to apply Hines to the divergent facts of this case. As the Court of Appeals held, Hines is inapplicable because in Hines "there was evidence that the Union's representation was in bad faith." (Pet. App. at 4a). *See*, Hines, 424 U.S. at 569-70. On the other hand, Morales' Amended Complaint contains no factual allegations to support a claim that the Union's representation was arbitrary, discriminatory or in bad faith. Nor was the Court of Appeals compelled to adhere to the ruling in Schoonover v. Consolidated Freightways Corp. of Delaware, 147 F.3d 492 (6th Cir. 1998), *cert. denied*, 525 U.S. 1139 (1999). Rather, the Court of Appeals properly distinguished Schoonover because, unlike Morales' Amended Complaint, there was evidence in Schoonover that the Union's representation "was perfunctory where its presentation at arbitration lasted 15 minutes and the union made 'little effort to rebut company's evidence.'" (Pet. App. at 4a), *quoting*, Schoonover, 147 F.3d at 495. In this case, the arbitration lasted three (3) full days with voluminous post-arbitration submissions by both sides.

Following the standard enunciated by this Court in DelCostello v. Int'l Brotherhood of Teamsters, 462 U.S. 151, 165 (1983), the Court of Appeals (as well as the District Court) properly determined that Morales had failed to allege that her Union's representation at arbitration was arbitrary, discriminatory or in bad faith. (Pet. App. at 3a). The Court of Appeals also correctly noted that Morales had failed to plead any factual allegations that would support a claim that the Union's conduct was motivated by bad faith. (Pet. App. at 4a). Further, citing Vosch v. Werner Continental, Inc., 734 F.2d 149, 154 (3d Cir. 1984), the Court of Appeals properly found that Morales had failed to allege that the arbitration process itself was a sham or

substantially inadequate. (Pet. App. at 3a). Based on these determinations, and the application of applicable legal standards, the Court of Appeals correctly affirmed the District Court's dismissal of Morales' Amended Complaint.

At bottom, Morales merely disagrees with the Court of Appeals' application of consistent federal precedent to the facts of her particular case. However, Morales' disagreement with the outcome of the application of this precedent certainly is not tantamount to a conflict between the decision below and Hines. Thus, despite Morales' efforts to conjure one, there is in fact no conflict between the decision of the Court of Appeals and any ruling of this Court or any other Circuit Court and her application for certiorari should be denied.

## II. PETITIONER'S OBJECTIONS AND REQUESTS FOR RELIEF DO NOT MERIT THIS COURT'S REVIEW

The Petition presents several objections to the decision below, none of which is appropriate for this Court's review or resolution on this record. Morales essentially asks the Court to correct alleged errors, which is not the function of this Court's certiorari jurisdiction. In addition, there is no basis for review here in any event because these issues were correctly decided by the Court of Appeals and/or were not raised below.

Contrary to Morales' arguments in support of her Petition, her challenges to the final and binding decision of the arbitrator upholding her termination are nothing more than disagreements over the tactics and strategy employed by her personal attorney and the Union at arbitration. (Pet. App.

at 3a). Thus, the Court of Appeals properly found that Morales' factual allegations did not support a claim that the Union acted in an arbitrary, discriminatory or bad faith manner. (Pet. App. at 3a).

Further, Morales incorrectly claims that the Court of Appeals improperly applied a negligence standard to her allegations. (Pet. at 14). The Court of Appeals properly evaluated the allegations contained in Morales' Amended Complaint pursuant to the standard set forth in DelCostello in finding that Morales had failed to allege that the Union had acted in bad faith. (Pet. App. at 3a). The Court of Appeals acted consistently with the Vosch standard in determining that Morales' factual allegations did not support a claim that the arbitration was a sham or substantially inadequate. (Pet. App. at 3a). In response to Morales' allegations, the Court of Appeals merely noted that **even if** the Union "was negligent in failing to submit evidence or call certain witnesses, the Union's negligence or poor judgment does not establish unfair representation." (Pet. App. at 3a-4a), *citing*, Findley v. Jones Motor Freight Div. Allegheny Corp., 639 F.2d 953, 958 (3d Cir. 1981).

Moreover, as found by the Court of Appeals, the allegations of Morales' Amended Complaint do not support claims for unfair representation or a sham arbitration. (Pet. App. at 4a). Even after construing the allegations in a light most favorable to Morales, the Court of Appeals (as well as the District Court) found that the factual allegations do not sustain either cause of action. Notwithstanding Morales' arguments to the contrary, the allegations of the Amended Complaint cannot be read as anything but disagreements over the strategic decisions made by her personal counsel as well as counsel for the Union at her arbitration. Indeed, Morales' argument is based on nothing more than dissatisfaction with the outcome of the arbitration.

Morales' argument that she should be permitted to amend her Amended Complaint yet again does not warrant this Court's exercise of its certiorari jurisdiction particularly where these issues were not raised below. Here, Morales originally filed a Complaint on December 10, 1999, against PF Labs only, alleging claims for: (1) defamation, (2) intentional infliction of emotional distress and (3) "alternative liability of P.F. Laboratories in respondeat superior." Civil Action No. 99-3969. The District Court permitted Morales to voluntarily dismiss this lawsuit and re-file a complaint alleging a breach of the duty of fair representation. Thereafter, Morales filed the instant lawsuit against PF Labs, claiming that her Union had breached its duty of fair representation by failing to make certain arguments and to offer certain "evidence" at arbitration. Civil Action No. 2:00-150. Subsequently, Morales filed an Amended Complaint to correct her citation reference to §301 of the LMRA. After filing in essence three complaints against PF Labs, Morales should not now be permitted to once again amend her Amended Complaint.

However, even if Morales' argument that the Court below erred in failing to permit her to again amend her Amended Complaint had some validity, this Court's function is not to correct isolated errors of fact or law that are unique to a particular case. Watt, 451 U.S. at 275. At most, this again amounts to no more than Petitioner's disagreement with the Court of Appeals' application of law to the facts of her particular case and therefore, does not warrant review by this Court.

## CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

Carmine A. Iannaccone
*Counsel of Record*
EPSTEIN BECKER & GREEN, P.C.
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
(973) 642-1900

Attorneys for Respondent The P.F. Laboratories, Inc